

HOUSE BILL No. 5007

September 25, 2013, Introduced by Reps. Singh, Robinson, Slavens, Schor, Barnett, Kivela, Durhal, Switalski, Yanez, Roberts, Tlaib, Faris, Brunner, Smiley, Cochran, McCann, Zemke and Nathan and referred to the Committee on Regulatory Reform.

A bill to amend 1915 PA 31, entitled "Youth tobacco act," by amending the title and sections 1, 2, and 4 (MCL 722.641, 722.642, and 722.644), as amended by 2006 PA 236.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to prohibit the selling, giving, or furnishing of tobacco products **AND DEVICES THAT DELIVER NICOTINE** to minors; to prohibit the purchase, possession, or use of tobacco products **AND DEVICES THAT DELIVER NICOTINE** by minors; to regulate the retail sale of tobacco products **AND DEVICES THAT DELIVER NICOTINE**; to prescribe penalties; and to prescribe the powers and duties of certain state agencies and departments.

Sec. 1. (1) A person shall not sell, give, or furnish a

1 tobacco product, **E-CIGARETTE, OR E-CIGARETTE CARTRIDGE** to a minor.
2 A person who violates this subsection is guilty of a misdemeanor
3 punishable by a fine of not more than \$50.00 for each violation.

4 (2) A person who sells tobacco products, **E-CIGARETTES, OR E-**
5 **CIGARETTE CARTRIDGES** at retail shall post, in a place close to the
6 point of sale and conspicuous to both employees and customers, a
7 sign produced by the department of community health that includes
8 the following statement:

9 "The purchase of **A** tobacco ~~products~~**PRODUCT, E-CIGARETTE, OR**
10 **E-CIGARETTE CARTRIDGE** by a minor under 18 years of age and the
11 provision of **A** tobacco ~~products~~**PRODUCT, E-CIGARETTE, OR E-**
12 **CIGARETTE CARTRIDGE** to a minor are prohibited by law. A minor **WHO**
13 unlawfully ~~purchasing~~**PURCHASES** or ~~using~~**USES A** tobacco ~~products~~
14 **PRODUCT, E-CIGARETTE, OR E-CIGARETTE CARTRIDGE** is subject to
15 criminal penalties."

16 (3) If the sign required under subsection (2) is more than 6
17 feet from the point of sale, it shall be 5-1/2 inches by 8-1/2
18 inches and the statement required under subsection (2) shall be
19 printed in 36-point boldfaced type. If the sign required under
20 subsection (2) is 6 feet or less from the point of sale, it shall
21 be 2 inches by 4 inches and the statement required under subsection
22 (2) shall be printed in 20-point boldfaced type.

23 (4) The department of community health shall produce the sign
24 required under subsection (2) and have adequate copies of the sign
25 ready for distribution to licensed wholesalers, secondary
26 wholesalers, and unclassified acquirers of tobacco products **AND TO**
27 **PERSONS WHO SELL E-CIGARETTES OR E-CIGARETTE CARTRIDGES** free of

1 charge. Licensed wholesalers, secondary wholesalers, and
2 unclassified acquirers of tobacco products shall obtain copies of
3 the sign from the department of community health and distribute
4 them free of charge, upon request, to persons who **SELL TOBACCO**
5 **PRODUCTS AND WHO** are subject to subsection (2). The department of
6 community health shall provide copies of the sign free of charge,
7 upon request, to persons subject to subsection (2) who do not
8 purchase their supply of tobacco products from wholesalers,
9 secondary wholesalers, and unclassified acquirers of tobacco
10 products licensed under the tobacco products tax act, 1993 PA 327,
11 MCL 205.421 to 205.436, **AND TO PERSONS WHO SELL E-CIGARETTES OR E-**
12 **CIGARETTE CARTRIDGES AT RETAIL.**

13 (5) It is an affirmative defense to a charge under subsection
14 (1) that the defendant had in force at the time of arrest and
15 continues to have in force a written policy to prevent the sale of
16 tobacco products, **E-CIGARETTES, OR E-CIGARETTE CARTRIDGES, AS**
17 **APPLICABLE**, to persons under 18 years of age and that the defendant
18 enforced and continues to enforce the policy. A defendant who
19 proposes to offer evidence of the affirmative defense described in
20 this subsection shall file ~~and serve~~ notice of the defense, in
21 writing, ~~upon~~**WITH** the court and **SERVE A COPY OF THE NOTICE ON** the
22 prosecuting attorney. The **DEFENDANT SHALL SERVE THE** notice ~~shall be~~
23 ~~served~~ not less than 14 days before the date set for trial.

24 (6) A prosecuting attorney who proposes to offer testimony to
25 rebut the affirmative defense described in subsection (5) shall
26 file ~~and serve~~ a notice of rebuttal, in writing, ~~upon~~**WITH** the
27 court and **SERVE A COPY OF THE NOTICE ON** the defendant. The

1 **PROSECUTING ATTORNEY SHALL SERVE THE** notice ~~shall be served~~ not
2 less than 7 days before the date set for trial and shall ~~contain~~
3 **INCLUDE IN THE NOTICE** the name and address of each rebuttal
4 witness.

5 (7) Subsection (1) does not apply to the handling or
6 transportation of a tobacco product, **E-CIGARETTE, OR E-CIGARETTE**
7 **CARTRIDGE** by a minor under the terms of ~~that~~ **THE** minor's
8 employment.

9 Sec. 2. (1) Subject to subsection (3), a minor shall not do
10 any of the following:

11 (a) Purchase or attempt to purchase a tobacco product, **E-**
12 **CIGARETTE, OR E-CIGARETTE CARTRIDGE.**

13 (b) Possess or attempt to possess a tobacco product, **E-**
14 **CIGARETTE, OR E-CIGARETTE CARTRIDGE.**

15 (c) Use a tobacco product, **E-CIGARETTE, OR E-CIGARETTE**
16 **CARTRIDGE** in a public place.

17 (d) Present or offer to an individual a purported proof of age
18 that is false, fraudulent, or not actually his or her own proof of
19 age for the purpose of purchasing, attempting to purchase,
20 possessing, or attempting to possess a tobacco product, **E-**
21 **CIGARETTE, OR E-CIGARETTE CARTRIDGE.**

22 (2) An individual who violates subsection (1) is guilty of a
23 misdemeanor punishable by a fine of not more than \$50.00 for each
24 violation. Pursuant to a probation order, the court may also
25 require an individual who violates subsection (1) to participate in
26 a health promotion and risk reduction assessment program, if
27 available. An individual who is ordered to participate in a health

1 promotion and risk reduction assessment program under this
2 subsection is responsible for the costs of participating in the
3 program. In addition, an individual who violates subsection (1) is
4 subject to the following:

5 (a) For the first violation, the court may order the
6 individual to do 1 of the following:

7 (i) Perform not more than 16 hours of community service in a
8 hospice, nursing home, or long-term care facility.

9 (ii) Participate in a health promotion and risk reduction
10 program, as described in this subsection.

11 (b) For a second violation, in addition to participation in a
12 health promotion and risk reduction program, the court may order
13 the individual to perform not more than 32 hours of community
14 service in a hospice, nursing home, or long-term care facility.

15 (c) For a third or subsequent violation, in addition to
16 participation in a health promotion and risk reduction program, the
17 court may order the individual to perform not more than 48 hours of
18 community service in a hospice, nursing home, or long-term care
19 facility.

20 (3) Subsection (1) does not apply to a minor participating in
21 any of the following:

22 (a) An undercover operation in which the minor purchases or
23 receives a tobacco product, **E-CIGARETTE, OR E-CIGARETTE CARTRIDGE**
24 under the direction of the minor's employer and with the prior
25 approval of the local prosecutor's office as part of an employer-
26 sponsored internal enforcement action.

27 (b) An undercover operation in which the minor purchases or

1 receives a tobacco product, **E-CIGARETTE, OR E-CIGARETTE CARTRIDGE**
2 under the direction of the state police or a local police agency as
3 part of an enforcement action, unless the initial or
4 contemporaneous purchase or receipt of the tobacco product, **E-**
5 **CIGARETTE, OR E-CIGARETTE CARTRIDGE** by the minor was not under the
6 direction of the state police or the local police agency and was
7 not part of the undercover operation.

8 (c) Compliance checks in which the minor attempts to purchase
9 tobacco products for the purpose of satisfying federal substance
10 abuse block grant youth tobacco access requirements, if the
11 compliance checks are conducted under the direction of a substance
12 abuse coordinating agency ~~as defined in section 6103 of the public~~
13 ~~health code, 1978 PA 368, MCL 333.6103,~~ and with the prior approval
14 of the state police or a local police agency.

15 (4) Subsection (1) does not apply to the handling or
16 transportation of a tobacco product, **E-CIGARETTE, OR E-CIGARETTE**
17 **CARTRIDGE** by a minor under the terms of ~~that~~ **THE** minor's
18 employment.

19 (5) This section does not prohibit ~~the~~ **AN** individual from
20 being charged with, convicted of, or sentenced for any other
21 violation of law ~~arising~~ **THAT ARISES** out of the violation of
22 subsection (1).

23 Sec. 4. As used in this act:

24 (A) **"E-CIGARETTE" MEANS AN ELECTRONIC ORAL DEVICE TO WHICH ALL**
25 **OF THE FOLLOWING APPLY:**

26 (i) **THE DEVICE PROVIDES A VAPOR OF NICOTINE.**

27 (ii) **THE DEVICE SIMULATES SMOKING THROUGH ITS USE OR THROUGH**

1 INHALATION OF THE VAPOR GENERATED BY THE DEVICE.

2 (iii) THE DEVICE IS NOT APPROVED BY THE UNITED STATES FOOD AND
3 DRUG ADMINISTRATION AS AN AID IN QUITTING THE USE OF TOBACCO OR A
4 NICOTINE PRODUCT.

5 (iv) THE DEVICE IS COMPOSED OF A HEATING ELEMENT, BATTERY, OR
6 ELECTRONIC CIRCUIT.

7 (B) "E-CIGARETTE CARTRIDGE" MEANS A CONTAINER TO WHICH ALL OF
8 THE FOLLOWING APPLY:

9 (i) THE CONTAINER HAS OPENINGS ON EACH END.

10 (ii) THE CONTAINER SERVES AS A LIQUID RESERVOIR AND MOUTHPIECE.

11 (iii) THE CONTAINER ALLOWS THE PASSAGE OF LIQUID TO AN ATOMIZER
12 AND VAPOR FROM THE ATOMIZER TO THE USER'S MOUTH.

13 (iv) THE CONTAINER CONTAINS LIQUID FOR PRODUCING VAPOR IN AN E-
14 CIGARETTE.

15 (C) ~~(a)~~—"Minor" means an individual ~~under~~ WHO IS LESS THAN 18
16 years of age.

17 (D) "PERSON WHO SELLS E-CIGARETTES OR E-CIGARETTE CARTRIDGES
18 AT RETAIL" MEANS A PERSON WHOSE ORDINARY COURSE OF BUSINESS
19 CONSISTS, IN WHOLE OR IN PART, OF THE RETAIL SALE OF E-CIGARETTES
20 OR E-CIGARETTE CARTRIDGES.

21 (E) ~~(b)~~—"Person who sells tobacco products at retail" means a
22 person whose ordinary course of business consists, in whole or in
23 part, of the retail sale of tobacco products subject to state sales
24 tax.

25 (F) ~~(e)~~—"Public place" means a public street, sidewalk, or
26 park or any area open to the general public in a publicly owned or
27 operated building or public place of business.

1 **(G)** ~~(d)~~—"Tobacco product" means a product that contains
2 tobacco and is intended for human consumption, including, but not
3 limited to, cigarettes, noncigarette smoking tobacco, or smokeless
4 tobacco, as those terms are defined in section 2 of the tobacco
5 products tax act, 1993 PA 327, MCL 205.422, and cigars.

6 **(H)** ~~(e)~~—"Use a tobacco product" means to smoke, chew, suck,
7 inhale, or otherwise consume a tobacco product.